IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

MFA.No. 655 of 2002(D)

OPMV.2004/1994 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

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APPELLANT: 3RD RESPONDENT

THE ORIENTAL INSURANCE COMPANY LIMITED
NNOW REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE,METRO PALACE,KOCHI-18

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: PETITIONERS AND RESPONDENTS 1 AND 2

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1. NABEESA W/O.BAVA MOULAVI,NADAKKAL HOUSE,
NOCHIMA,ALUVA.

2. SIRAJUDEEN S/O.BAVA MOULAVI,DO.DO.

3. NASEEMA (MINOR) D/O.BAVA MOULAVI,DO.DO.

4. NIZAMUDEN (MINOR) S/O.BAVA MOULAVI,DO.DO
.

5. MOHAMMED,NADAKKAL HOUSE,NOCHIMA,ALUVA(DIED).

(IT IS RECORDED THAT r5 IS DIED AND THAT THERE IS NO NEED
TO IMPOLEAD ANY OTHER LR s OTHER THAN R1 TO R4
WHO ARE ALREADY IN THE PARTY ARRAY VIDE ORDER
DT. 7.9.07 ON MEMO DT.23.9.03 (IF 6349/03).

6. ABDUL RAHIMAN S/O.SEETHI,PALLATH HOUSE,
ERUMATHALA,ALUVA.

7. SIVADASAN S/O.PARAMESWARAN,NJATTUVEETIL,
NEAR SNDP TEMPLE,KEEZHUMADU,ALUVA.

(MINOR RESPONDENTS 3 AND 4 ARE REPRESENTED BY THEIR MOTHER IST
RESPONDENT)

BY ADV. SRI.PHILIP J.VETTICKATTU

THIS MISC. FIRST APP\\EAL HAVING BEEN FINALLY HEARD
ON 07/09/2007, ALONG WITH MFA NO. 662 OF 2002 THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.3855 OF 2002 IN MFA.NO.655 OF 2002:

DISMISSED

7.9.2007

Sd/-
J.B.KOSHY, JUDGE
Sd/-
K.HEMA, JUDGE

/TRUE COPY/

PA TO JUDGE

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.655 OF 20O2
&
M.F.A.No. 662 of 2002

Dated this the 7th day of September, 2007

JUDGMENT

Koshy, J.

Husband of the first respondent in M.F.A.No.662 of 2002 was riding a scooter along with the husband of the respondent in MFA.665 of 2002. The rider as well as the pillion rider of the scooter died due to the accident. They claimed compensation of Rs.5 lakhs and Rs.6 lakhs respectively. The allegation of the claimants that the above scooter was hit behind by a mini lorry and the above mentioned lorry was insured by the appellant Insurance Company. PW2, who is the eye witness, was examined to prove that the accident occurred due to the negligence of the driver of the mini lorry. He is an independent witness. After going through the entire evidence, the Tribunal believed the version of PW2 and in the cross examination his evidence was not discredited. The contention of the appellant Insurance Company was that the police filed Exhibit B1 refer report. Learned counsel for the claimants submitted that they have filed a private complaint and the driver of the mini lorry was

convicted. Apart from that, we note that the question of negligence etc. cannot be questioned by the Insurance Company as they have not taken permission under Section 170. The total compensation awarded by the Tribunal in M.F.A.No.662 of 2002 is only Rs.3,87,000/- and in M.F.A.No.655 of 2002 compensation is Rs.3,63,000/-. Since the quantum of compensation cannot be questioned by the Insurance Company in the absence of Section 170 permission, we are of the view that no interference is required by the appellate court. Therefore, both the appeals are dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, J.

M.F.A.NO.655 OF 2002

&

M.F.A.NO.662 OF 2002

JUDGMENT

7.9.2007